IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1388 of 2004

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HITENDRABHAI MAVJIBHAI PARMAR - Petitioner(s)

Versus

INDIAN OIL CORPORATION THROUGH MANAGER & 3 - Respondent(s)

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Appearance :

MR MAHENDRA K PATEL for Petitioner No(s).: 1.

MR MANISH R BHATT for Respondent No(s).: 1.
RULE SERVED for Respondent No(s).: 2.
MR SAMIR J DAVE for Respondent No(s).: 2,3.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 17/06/2005

ORAL JUDGMENT

1. The petitioner by way of this petition has prayed to quash and set aside the order dated 23.04.2001 passed by respondent no. 2 and has further prayed to direct respondents no. 2 and 3 to refer the dispute to the

Industrial Tribunal, Rajkot.

2. The short facts of the case are that the petitioner was initially engaged as a casual labourer by respondent no. 1. It is the case of the petitioner that though he had worked for more than 240 days, his services were terminated without giving any notice or retrenchment compensation. It is further the case of the petitioner that after his termination, new workmen have been employed and juniors to him have been continued by respondent no. 1. Therefore, he approached respondent no. 1 with a request that he may be taken back in service.

3. It is further the case of the petitioner that though time and again he had represented his case before respondent no.1, he was not taken back in service and was given only a assurance that he will be taken back in service after consultation with the higher authorities. Since no action was taken by the respondent authority, the petitioner approached the Assistant Commissioner of Labour (Central). The learned Assistant Labour Commissioner after hearing both the sides, held that there was no possibility to settle the issue in question and closed the conciliation

proceedings. The Conciliation Officer, thereafter forwarded the failure report to respondent no. 2 for making Reference. Pursuant to the above, respondent no. 2 vide order dated 23.4.2001 held that the dispute in question was not fit for adjudication since it was raised at a belated stage i.e., after more than seven years and that to without furnishing any adequate reasons to justify the said delay. Hence, this petition.

4. Mr. Patel learned advocate for the petitioner has submitted that the issue involved in his petition is covered by the decision of this Court rendered in Special Civil Application No. 2001 of 1994, wherein this Court had directed the competent authority to reconsider the demand and make the Reference. He has, therefore, submitted that in view of the principle laid down in the said decision, the order dated 23.4.2001 passed by respondent no. 2 be quashed and set aside and respondents no. 2 and 3 herein be directed to refer the said dispute to the Industrial Tribunal, Rajkot.

5. As against that Mr. Bhatt learned advocate for the respondent has submitted that the concerned Officer was

justified in rejecting the Reference in view of the fact that the records of the respondent – Corporation might not be available after a lapse of seven years.

6. I have heard the learned advocates for the respective parties. Having perused the materials placed on record, I am of the opinion that the decision taken by the competent Officer of the respondent Corporation is erroneous, inasmuch as the Conciliation Officer ought not to have accepted the ground of the present respondent that the records were not available with it, thereby depriving the employee from adjudicating the dispute on hand. On this ground itself, the impugned order is required to be quashed and set aside.

7. In above view of the matter and in view of the aforesaid decision, the petition is allowed. The order dated 23.4.2001 passed by respondent no. 2 is quashed and set aside. It is however, clarified that it shall be open to the respondent Corporation to raise the contention that if the original records were already destroyed under its Rules, then no adverse inference shall be drawn against the employer, but if it is not destroyed the respondent

Corporation shall make the said records available for perusal of the Court. The Competent Officer is directed to reconsider the dispute and make the Reference. However, it will be open for the respondent to raise the contention that if the order is found to be bad, no back wages may be granted for the delay caused by the petitioner. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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